IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 940 OF 2004

Shri Devidas Chokha Kate ... Appellant

V/s

Shri Prabhakar Chokha Kate ... Respondent

Mr. Machindra Patil for the appellant.

Mr. Harshad Marathe holding for V.B. Tapkir for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 28TH JUNE, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the Addl. District Judge, Pandharpur, dismissing the appeal and confirming the judgment and order dismissing the suit, passed by the Civil Judge, Jr. Divn., Sangola, dated 29.6.2000.

2. I have heard the learned counsel for both parties. Perused the record.

3. The suit is filed in the year 1999 for specific performance of the agreement which was executed between

the parties on 1.10.1976. There is absolutely no evidence to show that the plaintiff was ready to perform his part of the contract at the foot of the agreement besides his bare word. There was not a single notice issued to the defendant calling upon him to perform his part of the contract. Both the Courts below have held that there is not even evidence to show that there was an agreement between the parties on 1.10.1976 and that amount of Rs.500/- was paid to the defendant at the foot of the said contract. In view of this aspect, on the basis of available evidence on record, both the Courts below have come to the conclusion that the plaintiff is not entitled to the relief of specific performance. It is needless to mention that such relief is the matter of discretion of the Court. I am satisfied that both the Courts below have used this discretion judiciously. There is no substantial question of law involved in this appeal and, therefore, the appeal stands dismissed with no order as to costs.

(P.V. Kakade, J.)